

STATE OF MICHIGAN
COURT OF APPEALS

SUPERIOR PLASTICS, INC,

Petitioner-Appellant,

v

STATE TAX COMMISSION,

Respondent-Appellee.

UNPUBLISHED

June 3, 2008

No. 275588

Tax Tribunal

LC No. 00-312897

Before: Whitbeck, P.J., and Owens and Schuette, JJ.

SCHUETTE, J. (*dissenting*).

I respectfully dissent from the opinion of my distinguished colleagues. I would reverse the final order of the Michigan Tax Tribunal holding that the State Tax Commission did not have jurisdiction under MCL 211.1154 to reassess the 1999 value of petitioner's property because it did not receive the petition for reassessment until 2002.

Petitioner, Superior Plastics, Inc., questioned the assessed values of certain parcels of land for the taxable years from 1999-2001. Hoping to obtain a lower assessed value on these two parcels, petitioner filed petitions under MCL 211.154. To accomplish this goal, petitioner completed the Michigan Department of Treasury, State Tax Commission Form 628. On the face of Form 628, on the very front page, it stated, "When you have completed this side of the form, send or carry the form to your local assessor who will complete the reverse side and file the form with the State Tax Commission." As has been noted by my colleagues in the majority, the reverse side of Form 628 stated that the local assessor should provide information and complete the remainder of the form, and it provided a mailing address for submittal to the State Tax Commission by the local assessor.

Petitioner hand delivered Form 628 to the local assessor's office in the City of Rochester on December 28, 2001, requesting lower taxable values on the two parcels in question for tax years 1999, 2000, and 2001. Time was of the essence, because if petitioner delayed filing Form 628 until after the New Year (2002), then the State Tax Commission could only review tax years 2000 and 2001, as there is only a "two-year look back" for disputed taxable values of property. Petitioner most certainly breathed a holiday sigh of relief, thinking that the submission of Form 628 on Friday, December 28, 2001, met the stated requirements on Form 628.

However, the State Tax Commission seemingly did not receive the completed form from the City of Rochester's assessor's office until May of 2002. As a result, both the State Tax

Commission and the Michigan Tax Tribunal concluded that petitioner has no recourse for the disputed 1999 valuation on the parcels.

Now, one can argue that petitioner should not have waited until the very last days of 2001, with New Year's festivities abounding, to submit Form 628. However, Form 628 stated what it stated: "When you have completed this side of the form, send or carry the form to your local assessor who will completed the reverse side and file the form with the State Tax Commission." Form 628 did NOT state, "Do not wait until the very end of the year, or worse yet until December 28, or this form may not reach the State Tax Commission until the following year." Apparently, petitioner was not turned away from the local assessor's office. Petitioner completed Form 628. Petitioner delivered Form 628 to the local assessor before the end of 2001, in accord with the form's instructions. Therefore, petitioner met the deadline. And it is significant to note that Form 628 has since been revised to include language encouraging the taxpayer to send a copy of Form 628 directly to the State Tax Commission, with the reminder that failure to file by December 31 may impact the State Tax Commission's jurisdiction to hear a disputed tax matter.

The delay in submittal of Form 628 by the local assessor's office to the State Tax Commission does not appear to be the failure of petitioner. As such, petitioner should not be penalized. At the very least, the tie goes to the runner—in this instance, the taxpayer, not the government. Therefore, I would reverse the decision of the Michigan Tax Tribunal.

/s/ Bill Schuette